IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

Bail Appl..No. 671 of 2007()

CRIME NO.41 OF 2007 OF ERATTUPETTA POLICE STATION

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: PETITIONERS/ACCUSED:

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1. ABDUL SALAM, S/O.PAREED, AGED 36,
   ELAKKAYAM, NADACKAL, ERATTUPETTA.

2. PAREEKOCHU, S/O.KUNJUMOIDHEEN,
   AGED 65, ELAKKAYAM, NADACKAL,
   ERATTUPETTA.

3. E.I. ABDUL KHADER, AGED 45,
   ELAKKAYAM, NADACKAL, ERATTUPETTA.

4. NAVAS, S/O.MOHAMMED KUNJU,
   AGED 24, KEERIYATHOTTAM, NADACKAL,
   ERATTUPETTA.

5. SUNEER S/O.ABDUL KHADER,
   AGED 17, ELAKKAYAM, NADACKAL,
   ERATTUPETTA.

6. HASSAN, S/O.PAREED, AGED 32,
   ELAKKAYAM, NADACKAL, ERATTUPETTA.

BY ADV. SRI.V.K.MOHAMMED YOUSUF

RESPONDENTS: COMPLAINANTS:

STATE OF KERALA, REPRESENTED
SUB INSPECTOR OF POLICE, ERATTUPETTA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.671 of 2007

Dated this the 12th day of February, 2007

ORDER

The petitioners are accused 1 to 6 and they face allegations, inter alia, under Section 308 read with 149 I.P.C. The crux of the allegations is that they wrongfully restrained and assaulted the defacto complainant with dangerous weapons with the intention of causing culpable homicide not amounting to murder against the victim. The alleged incident had taken place on 27.01.2007 and the crime has been registered on 28.01.2007. According to the petitioners, the allegations are totally false. The defacto complainant happens to be a political activist. The 3rd accused's wife is a member of the Panchayat. She had withdrawn her support to the Left Democratic Front. Consequently there is a dispute between members of the L.D.F presently in power and the persons belonging to the camp of the wife of the 3rd accused. Making use of the political influence which the defacto complainant has, the present allegation under Section 308 I.P.C is raised transparently with vexatious intention. If the petitioners were arrested and detained in custody, it would amount to undeserved prejudice, inconvenience and hardship. In these circumstances it is prayed that directions under Section 438 Cr.P.C may be issued in favour of the petitioners.

2. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor points out that going by the nature of the injuries and the nature of the allegations, he may not have seriously opposed the application for anticipatory bail. But in this case there is a threat of violence in the locality and unless proper safeguards are made, it may unnecessarily lead to a law and order situation in the locality. In these circumstances, it is prayed that anticipatory bail may not be granted.

3. I have anxiously considered the submissions made at the Bar. I have been taken through the nature of the allegations in the F.I statement as also the nature of the injuries allegedly suffered by the victim. My attention has also been drawn to the fact that an earlier complaint has been filed and a crime registered raising allegations of violent and culpable conduct against accused Nos.1 and 3.

4. Having considered all the relevant inputs, I am certainly persuaded to agree that this is an eminently fit case where the extra ordinary equitable discretion under Section 438 Cr.P.C deserves to be invoked in favour of the petitioners. Appropriate conditions can of course be imposed to allay the apprehension aired by the learned Public Prosecutor.

5. This Bail Application is, in these circumstances, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioners shall appear before the learned Magistrate having jurisdiction on 19.02.2007. They shall be released on bail on condition that they execute bonds for Rs.25,000/- each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m and 1 p.m on 20, 21 and 22 of February, 2007. Thereafter they shall appear before the Investigating Officer between 10 a.m and 11 a.m on all Mondays until the final report is filed.

iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i) above, these directions shall lapse and the police shall be at liberty thereafter to arrest the petitioners and deal with them in accordance with law.

iv) If the petitioners were arrested at any time prior to their appearance as directed in clause (i) above, they shall be released on condition that they execute bonds for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate as directed in clause (i) above.

(R.BASANT, JUDGE)

rtr/-